

IDA LEE ANDERSON (ON RECONSIDERATION)

IBLA 82-1041

Decided May 31, 1983

Petition for reconsideration of Ida Lee Anderson, 70 IBLA 383 (1983).

Board decision vacated; Montana State Office decision reversed and remanded.

1. Oil and Gas Leases: Applications: Descriptions

Under 43 CFR 3101.1-4(d)(2), where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. However, a section containing 639 acres, whose available lands may be described by subdivisional parts, is not an irregular section within the meaning of the regulation.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Counsel for Ida Lee Anderson has filed a petition for reconsideration of the Board's decision, Ida Lee Anderson, 70 IBLA 383 (1983), which affirmed a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer M 47590 for land in sec. 31, T. 25 N., R. 17 W., Principal meridian, Montana. We held that BLM properly rejected that part of Anderson's offer which failed to describe the lands for leasing in an irregular protracted section in accordance with 43 CFR 3101.1-4(d)(2).

In the petition counsel asserts that the Board has given an overly restrictive interpretation to the term "regular section." Counsel states

that the U.S. Department of the Interior, BLM, Manual of Surveying Instructions, 1973, Technical Bulletin 6 at page 70, defines a regular section and distinguishes between the ideal section containing 640 acres and a regular section. Counsel asserts that according to his calculations a section could vary "more than 4 acres and still be considered regular."

Counsel cites the definition of "section" in BLM's Glossary of Public Land Terms (1949 ed.) at page 47 that a section is "[t]he major subdivision of a township; normally a quadrangle approximately one mile square containing approximately 640 acres." He concludes that a normal section may contain more or less than 640 acres. He suggests that use of the term "irregular section" in 43 CFR 3101.1-4(d)(2) was meant to describe a section having irregular boundaries or one where the acreage in the section could not be identified by normal subdivisional parts.

Counsel also asserts that in a normal township all sections are considered regular, even those on the north and west boundaries. He alleges that in the oil and gas industry sections are considered irregular only if there are irregular boundaries or the sections contain sufficient excess acreage to require additional lots.

Counsel requests that the Board grant the petition for reconsideration and rule that the section in question contain 639 acres is not an irregular section.

[1] We are persuaded by counsel's arguments. In this case BLM considered section 31 to be irregular because it contains 639 acres. For that reason, it applied the exception language of 43 CFR 3101.1-4(d)(2). That regulation requires that an offer may include less than an entire protracted section where only a portion of that section is available for lease. The exception language of 43 CFR 3101.1-4(d)(2) states: "If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease."

We conclude that merely because the section involved in this appeal contains 639 acres does not mean that it falls within the exception language of the regulation. The exception is more properly applicable to a situation where a section has irregular boundaries or where the acreage in the section is not identifiable by normal subdivisional parts. In this case it was feasible to describe the available lands in the section by subdivisional parts.

Counsel has directed our attention to an earlier Departmental case William B. Collister, 71 I.D. 124 (1964), which construed 43 CFR 3123.8(c) (1964), a predecessor regulation containing the same language as 43 CFR 3101.1-4(d)(2). Although that case did not discuss what was an irregular section, it was stated that the purpose of the regulation was "to insure the orderly leasing of the public lands, not to impose unnecessarily burdensome technical requirements upon applicants for the use of those lands." Id. at 126. We agree. Our earlier decision affirmed the imposition of a requirement that is not justified under the circumstances of the case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in Ida Lee Anderson, supra, is vacated and the decision of the Montana State Office is reversed and the case remanded.

Bruce R. Harris  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

James L. Burski  
Administrative Judge

